

RICHARD A. WILLERS

IBLA 86-206

Decided February 2, 1988

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. UMC 191029.

Reversed.

1. Evidence: Generally--Federal Land Policy and Management Act of 1976:
Assessment Work--Federal Land Policy and Management Act of 1976:
Recordation of Affidavit of Assessment Work or Notice of Intention to Hold
Mining Claims--Mining Claims: Assessment Work

Evidence that a mining claimant possesses a return receipt card or certified mail receipt indicating there was a timely filing of a document with BLM and there is no evidence that the claimant filed any other document with BLM on that date serves to rebut the presumption of non-filing which is customarily applied where BLM's records indicate a required filing has not occurred. Although the nature of the document received by BLM is not described on the receipt or card, the existence of this proof indicates that, more likely than not, a required document was in fact received by BLM.

APPEARANCES: Richard A. Willers, pro se, San Jose, California.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Richard A. Willers has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated December 10, 1985, declaring abandoned and void the Robin #18 placer mining claim for appellant's failure to timely file a notice of intention to hold or affidavit of assessment work for the 1983 calendar year.

Appellant argues in his statement of reasons that he did, in fact, timely file a notice of intention to hold the Robin #18 claim and contends that BLM received this notice and thereafter misplaced or lost it. In support thereof, appellant includes a copy of the disputed notice. Although

this copy does not bear a BLM date-stamp showing its timely receipt in the Utah State Office, the copy indicates that it had been filed on October 11, 1983, in the Uintah County records. The copy also bears the statement of a notary public, reciting that Willers had appeared before the notary on September 2, 1983, and acknowledged the signature thereon to be his.

Willers also includes with his statement of reasons a copy of a return receipt card indicating that BLM received an unidentified certified letter (P 503 862 680) on Nov 18, 1983, from him. Although this card does not show to when the certified letter was addressed, a certified mail receipt (P 503 862 680) is also furnished by Willers indicating this letter was sent to BLM at P.O, Box 11505, Salt Lake City, Utah 84111.

By order of September 16, 1987, this Board directed BLM to furnish by October 30, 1987, any explanation it may have as to the contents of the aforementioned certified letter. Appellant was also granted a period of time to respond to information furnished by BLM. No submission has been received from either party, In the absence of further information from the parties, we examine the record as originally received.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and the regulation at 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

Filing or recording the required document with the county or local recording district does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBIA 45 (1985). The responsibility for complying with the recordation and filing requirements of FLPMA rests with the owner of the unpatented mining claim. Congress mandated that failure to file the proper documents within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, those claims for which timely filings are not made are extinguished by operation of law regardless of the claimant's intent to hold the claim, *United States v. Locke*, 471 U.S. 84 (1985). This Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. *Lynn Keith*, 53 IBLA at 196, 88 I.D. at 372,

Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. *H. S. Radenecher*, 58 IBIA 152, 88 I.D. 873 (1981), This presumption of regularity is not overcome by an uncorroborated statement that the document was submitted to BLM or by evidence that the claimant timely filed a notice of intention to hold with the county or other local recording office. *John R. Wellborn*, 87 IBLA 20 (1985). The presumption is, however, overcome by evidence which establishes a fact so that reasonable minds can draw but one inference. *John Walter Starks*, 55 IBLA 266 (1981), appeal

dismissed, *J. Walter Starks v. Watt*, Civ. No. C-81-0711 (C.D. Utah Mar. 2, 1982); *Falstaff Brewing Corp. v. Thompson*, 101 F.2d 301 (8th Cir.), cert. denied, 307 U.S. 631 (1939).

[1] Willers has overcome the presumption which ordinarily arises from the absence of documents in BLM's official files, from which it is customarily inferred that there has not been a required filing, by showing that some document was filed by him with BLM on November 18, 1983. BLM has not suggested that appellant made any other filing at the time. While appellant has not established that the document delivered to BLM on that day was the required document needed to preserve the validity of his claims, he has made a sufficient showing to rebut the customary presumption which would otherwise require us to infer that the absence of a required document from BLM's files can be equated with a failure to file the document. In an analogous situation, described in *Elizabeth D. Anne*, 66 IBLA 126 (1982), the Board found an appellant had overcome the presumption of regularity accorded to BLM recordkeeping. There, the Board found it was improper to reject oil and gas lease applications for the reason a required list of applicants was not furnished, in the face of proof that there had been some sort of timely submission made on behalf of the applicants. The Board observed, concerning this circumstance, that:

In the instant case, the submission of the machine copy of letter dated May 13, 1981, from Sartex to the Montana State Office would not, standing alone, constitute sufficient evidence to support a finding by this Board that the original was mailed to and received by BLM. However, the three return receipt cards do establish that BLM received three separate mailings from Sartex on May 15, 1981. While this is far from conclusive proof that the letter was included among those deliveries, we regard it as sufficient corroboration to overcome the "presumption of regularity." There were only a limited number of documents which Sartex had reason to file with the Montana State Office in May of 1981 in connection with its filing of the four oil and gas lease applications, and because the blank copy of the "Agent's Agreement" was not noted as received by BLM until May 21, 1981, there is evidence that four separate mailings from Sartex were received by the Montana State Office within the span of 5 days during that month. We conclude, therefore, that it is more probable than not that the letter of May 13, 1981, was included among those deliveries. [Emphasis in original.]

Id., at 128. So, too, in this case, it seems "more probable than not" that the document received by BLM on November 18, 1983, was the required notice of intention to hold which Willers states he sent to the agency. Since BLM has not responded to our invitation to explain the significance of the receipt card and the mail receipt, we find that Willers has established, by a preponderance of the evidence of record before us that the notice of intention to hold was timely received.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

